

# Agenda Item Form

Agenda Date: 6-2-04

Districts Affected: All

Dept. Head/Contact Information: Norman C. Merrifield (Ext 4331)

## Type of Agenda Item:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Resolution            | <input type="checkbox"/> Staffing Table Changes   | <input type="checkbox"/> Board Appointments        |
| <input type="checkbox"/> Tax Installment Agreements       | <input type="checkbox"/> Tax Refunds              | <input type="checkbox"/> Donations                 |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer          | <input type="checkbox"/> Item Placed by Citizen    |
| <input type="checkbox"/> Application for Facility Use     | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements            | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application         |
| <input type="checkbox"/> Other _____                      |   |  |

## Funding Source:

- ☒ General Fund
- ☐ Grant (duration of funds: \_\_\_\_\_ Months)
- ☐ Other Source: \_\_\_\_\_

## Legal:

- ☒ Legal Review Required      Attorney Assigned (please scroll down): John Nance      ☐ Approved      ☐ Denied

Timeline Priority: ☒ High      ☐ Medium      ☐ Low      # of days: \_\_\_\_\_

## Why is this item necessary:

Authorizes the Parks & Recreation Department & other City departments to have live and recorded music performances protected by copyright laws.

## Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

None

## Statutory or Citizen Concerns:

None

## Departmental Concerns:

None

TO 2 PM 12:00 PM 02  
CITY CLERK DEPARTMENT

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the Performance License for Municipalities with SESAC, Inc. (SESAC) providing a license for the performance of live or recorded music by City departments on City premises or at City-sponsored events at other locations. Under the terms of the Agreement, the City will pay an annual license fee in accordance with Schedule A of the Agreement. The initial annual license fee will be \$2,258.00. The Agreement shall have an initial term of one year, commencing January 1, 2004, and shall continue in effect for additional terms of one year each until terminated.

ADOPTED this 2<sup>nd</sup> day of June, 2004.

THE CITY OF EL PASO

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Joe Wardy  
Mayor

ATTEST:

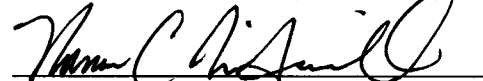
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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
John F. Nance  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
Norman C. Merrifield, Ed.D.  
Director  
Parks and Recreation Department

## SESAC PERFORMANCE LICENSE for MUNICIPALITIES

Agreement made in New York by and between SESAC, Inc. ("SESAC"), a New York corporation, with offices at 55 Music Square East, Nashville, TN 37203 and

The City of El Paso  
(Legal Name of Entity) \_\_\_\_\_ ("LICENSEE")  
Attention: Director of Parks and Recreation  
(Billing Address) \_\_\_\_\_  
Two Civic Center Plaza  
(City, State, ZIP) \_\_\_\_\_ El Paso, Texas 79901  
Telephone: \_\_\_\_\_ 915-541-4331 Fax: \_\_\_\_\_ 915-541-4355  
E-mail: MerrifieldNC@elpasotexas.gov

SESAC and LICENSEE hereby mutually agree as follows:

1. **GRANT OF RIGHTS:** Effective as of January 01, 2004, (the "Effective Date") SESAC grants to LICENSEE the non-exclusive right and license to publicly perform live or recorded non-dramatic renditions of the musical compositions, the performance rights to which SESAC controls and/or is empowered to license (the "Compositions") solely on and in connection with the following:

Name: City of El Paso  
Location: El Paso, TX (the "Municipality")



As used herein, "Municipality" shall include those locations owned, operated, and/or leased by LICENSEE which are used as governmental offices or for related purposes; those locations at which events are held under LICENSEE's sole control and attended by LICENSEE's employees, their families, social acquaintances, citizens, and other members of the public; and those areas owned, operated, and/or leased by LICENSEE which are under LICENSEE's sole control.

2. **LIMITATIONS OF RIGHTS:** The Rights granted pursuant to Paragraph 1 above shall specifically exclude:

- A. the right to perform, broadcast, televise or otherwise transmit the Compositions to any location (unless and to the extent otherwise expressly permitted in Schedule "A");
- B. the right to grant the Rights to any third party;
- C. "Grand Rights" in and to the Compositions ("Grand Rights" include, but are not limited to, the right to perform in whole or in part, dramatico-musical and dramatic works in a dramatic setting);
- D. performances of the Compositions (i) which are part of a background music service originating from any location including the Municipality, for which performance license fees are otherwise paid, regardless of the means by which such performances are transmitted on or to the Municipality, (ii) by coin-operated phonorecord players ("jukeboxes"), as defined in 17 U.S.C. § 116, and/or (iii) transmitted by computer on-line services or electronic bulletin boards and received on the Municipality (unless and to the extent otherwise expressly permitted in Schedule "A").

E. This license shall specifically exclude concerts. "Concerts" are those performances by an entertainer, group, or performer for which an admission or other fee is charged and which are not solely promoted by LICENSEE.

F. This license shall specifically exclude "Sporting events." "Sporting events" are professional, semi-professional, major or minor league athletic competitions.

G. This license shall specifically exclude Colleges and/or Universities.

### 3. TERM OF LICENSE:

A. The term of the Agreement shall be for an initial period that commences upon the Effective Date and continues for a period of one (1) year (the "Initial Period"). Thereafter, the Agreement shall automatically continue in full force and effect for successive additional periods of one (1) year ("Renewal Period(s)"). SESAC and /or LICENSEE shall have the right to terminate this Agreement as of the last day of the Initial Period or as of the last day of any Renewal Period(s) upon giving written notice to the other party by certified mail, return receipt requested, at least thirty (30) days prior to the commencement of any Renewal Period(s). The Initial Period and Renewal Period(s) are sometimes collectively referred to herein as the "Term."

B. Notwithstanding anything to the contrary contained herein, SESAC shall have the right to terminate this Agreement upon thirty (30) days written notice by reason of any law, rule, decree, or other enactment having the force of law, by any authority, whether federal, state, local, territorial or otherwise, which shall result in substantial interference in SESAC's operation or any substantial increase in the cost of conducting its business.

### 4. LICENSE FEE:

A. As consideration for the Rights granted herein, LICENSEE shall pay to SESAC the annual "License Fee" then in effect in accordance with the "Fee Schedule" set forth in Schedule "A" attached hereto.

B. In the event that SESAC is determined by the taxing authority or courts of any state in which LICENSEE conducts its operation to be liable for the payment of a gross receipts, sales, use, business use or other tax which is based on the amount of SESAC's receipts from LICENSEE, then LICENSEE shall reimburse SESAC, within thirty (30) days of notification therefor, for LICENSEE's pro rata share of any such tax derived from receipts received from LICENSEE, unless by constitution or statute, LICENSEE is exempt from any such tax whether applied directly or indirectly to LICENSEE.

C. SESAC shall have the right to impose a late payment charge of one and one-half percent (1.5%) per month for any License Fee payment that is more than thirty (30) days past due. In the event that SESAC incurs any costs or fees in connection with the collection of any amounts past due to SESAC hereunder, then LICENSEE shall be responsible for paying such amounts to SESAC unless by constitution or statute, LICENSEE is exempt from any such charge whether applied directly or indirectly to LICENSEE.

D. Effective January 1 of each calendar year the License Fee may be increased by five percent (5%), rounded to the nearest dollar. In the event that the percent increase in the Consumer Price Index - All Urban Consumer (CPI-U) as published by the Bureau of Labor Statistics, U.S. Department of Labor, between the most recent October and the preceding October exceeds five percent (5%), then the License Fee may be increased by that amount.

5. MISCELLANEOUS:

A. In the event LICENSEE fails to pay the License Fee when due or is otherwise in default of any other provision of this Agreement, then SESAC shall have the right to terminate this Agreement in addition to pursuing any and all other rights and/or remedies available if LICENSEE has not cured such breach within thirty (30) days following SESAC's written notice of such default.

B. SESAC shall have the right to withdraw from the scope of this License, upon written notice, the right to perform any musical composition licensed hereunder as to which any action has been threatened, instituted, or a claim made that SESAC does not have the right to license the performance rights in such composition.

C. This Agreement shall be binding upon and inure to the benefit of SESAC's and LICENSEE's legal representatives, successors, and assigns, but no assignment shall relieve SESAC or LICENSEE of their obligation under this Agreement.

D. This Agreement supersedes and cancels all prior negotiations and understandings between SESAC and LICENSEE in connection with the Municipality. No modification of this Agreement shall be valid or binding unless in writing and executed by SESAC and LICENSEE. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect. No waiver of any breach of this Agreement shall be deemed a waiver of any preceding, continuing or succeeding breach of the same, or any other provision of this Agreement.

IN WITNESS THEREOF, the parties have caused this Agreement to be duly signed as of

\_\_\_\_\_  
(Please insert today's date)

LICENSEE

SESAC, Inc

BY: \_\_\_\_\_

(Please sign here)

BY: \_\_\_\_\_

Joe Wardy

\_\_\_\_\_  
(Type or print name)

TITLE: Mayor

TITLE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Please mail signed license to: SESAC

55 Music Square East  
Nashville, TN 37203

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

  
John F. Nance, Assistant City Attorney

MAMGLUR/QTXT/SIGNATUR - 02/1/02 - City of El Paso - 63-42-01018

APPROVED AS TO CONTENT:

  
Norman C. Merrifield, Ed.D.

Director, Parks & Recreation Department

> > > > PLEASE DO NOT DETACH - MUST ACCOMPANY LICENSE < < < <

Schedule "A"  
MUNICIPALITY - 2004

**I. Municipality.** "Municipality," as used in the SESAC Performance License effective **January 01, 2004** (the "Agreement") to which this Schedule "A" is attached, shall be defined as the following Municipality:

Name: City of El Paso  
Location: El Paso, TX (the "Municipality")

**II. Fee Schedule/License Fee.**

**A.** The annual License Fee shall be based upon the "Population" of the Municipality as noted below:

<u>"Population"</u>	<u>License Fee for calendar year 2004</u>
Under 25,000	\$ 210
25,001 - 50,000	\$ 420
50,001 - 100,000	\$ 683
100,001 - 150,000	\$ 998
150,001 - 250,000	\$1,365
250,001 - 500,000	\$1,785
500,001 And over	\$2,258 + \$210 for each additional 100,000 population

"Population:" 563,662

This license will authorize audio and/or audio/visual musical performances (radio, records, tapes, compact discs, videocassettes, laser discs, television, and similar media), and live musical performances. This license will also authorize performances via music on hold systems operated by LICENSEE.

**B.** As used herein, "Population" shall mean the total population of the Municipality as of the most recent United States Census.

**C.** LICENSEE shall pay the license fee to SESAC upon execution of this Agreement, with license fees due and payable in advance. The initial license fee payment shall be a pro-rated amount calculated using the then current license fee rate(s) from the Effective Date through the end of the current billing period. Subsequent payments shall be made annually in one (1) payment on or before the first day of January, for the billing period of January 1 through December 31 of each calendar year of the Term.

**D.** Upon execution of this Agreement, LICENSEE shall provide SESAC with a report detailing the Population as of the Effective Date. Thereafter, on or before October 1 of each calendar year, in the event that a change in the Population results in a change in fee category, LICENSEE shall submit an updated report of the Population. License fees will be adjusted effective the following January 1. SESAC retains the right to obtain these figures through United States Census Data and make appropriate adjustments to the license fee.

E. Notwithstanding anything to the contrary contained in this Agreement, upon written notice to LICENSEE, SESAC shall have the right to adjust the rates set forth in the Fee Schedule. In the event that LICENSEE's License Fee increases as a result of such adjustment to the Fee Schedule, LICENSEE shall have the right to terminate this Agreement as of the date such increase is to take effect. LICENSEE must give SESAC written notice of such termination by certified mail, return receipt requested, not later than thirty (30) days after written notice of such increase is sent to LICENSEE by certified mail. This paragraph shall not apply to paragraph 4.B or 4.D of the Agreement.

III. This Schedule is incorporated and made part of the Agreement. Unless otherwise indicated, all capitalized terms in this Schedule "A" shall have the same meaning as set forth in the Agreement.

Please mail signed license to: SESAC 55 Music Square East Nashville, TN 37203

City of El Paso / 63-42-01018 I.D.# 188456  
MAMGLUR/QTXT/SIGNATUR, April 6, 2004